



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0911

RIN 1625-AA09

Drawbridge Operation Regulation; Mobile River, Hurricane, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the CSX Transportation Railroad swing bridge across the Mobile River, mile 13.1 near Hurricane, Alabama. The bridge will continue to open according to the drawbridge regulations but the bridge tender will operate this bridge from a remote location at the CSX railroad terminal in Mobile, Alabama.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2019-0911 in the "SEARCH" box and click "SEARCH."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Doug Blakemore, Eighth Coast Guard Bridge Administrator at (504) 671-2128 or email Douglas.A.Blakemore@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 27, 2020 the Coast Guard published a temporary deviation from regulations; request for comments (TD) entitled Drawbridge Operation Regulation; Mobile River, Hurricane, AL in the Federal Register (85 FR 4587). This temporary deviation was issued to test the remote operations system for 60 days. 8 comments were received and addressed in a NPRM under the same title.

On January 26, 2021 the Coast Guard published a second deviation to the regulations under the same title in the Federal Register (86 FR 7238) to test the remote operations for 180 days. The same 8 comments from the first test deviation were received.

On March 31, 2021 the Coast Guard published a Notice of Proposed Rulemaking under the same title in the Federal Register (86 FR 17096). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended September 28, 2021, we received the same eight comments, and addressed the adjudication of those comments in Section IV of this Final Rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The CSX Railroad Company, the owner of the bridge requested to change operation of the bridge from a tended drawbridge to a remotely operated drawbridge. The CSX Transportation Railroad drawbridge has a vertical clearance of 5' in the closed to navigation position and operates in accordance with 33 CFR 117.5. This rule will not change the operation schedule of the bridge. This bridge will be operated from the CSX

railroad yard located in Mobile, AL.

The waterway users include recreational vessels and commercial tows; which combined requires approximately six openings a day.

IV. Discussion of Comments, Changes and the Final Rule

The 8 comments received during the NPRM were the exact same comments provided during the both test deviations. The Coast Guard addressed all comments in the NPRM.

IV. Discussion of Final Rule

33 CFR 117.42 sets Coast Guard drawbridge regulations to operate a bridge from a remote location. This rule does not change the operating schedule nor does it change the request to open the bridge. Mariners requiring an opening may do so by contacting the CSX remote control center on Channels 13/16 or by the phone number posted at the bridge.

This rule allows CSX to control the drawbridge from their remote control center located in Mobile, AL and requires CSX to have the capability, including resources and manpower to return the operator to the bridge location within 3 hours following any of the below situations:

- Any component of the remote operations system fails and prevents the remote operator from being able to visually identify vessels, communicate with vessels, detect vessels immediately underneath the bridge or visually identify trains approaching the bridge.
- CSX fails to meet Federal Railway Administration (FRA) or any other government agency safety requirements.
- At the direction of the District Commander.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Add § 117.111 to read as follows:

§ 117.111 Mobile River.

(a) The draw of the CSX Transportation Railroad bridge, mile 13.1 near Hurricane, AL shall be remotely operated by the bridge tender at CSX's bridge remote control center in Mobile, AL and shall open promptly and fully when signaled to open. Vessels can contact the CSX bridge tender via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge to request an opening of the draw.

(b) CSX will return the tender to the bridge location within 3 hours following any of the below situations:

- (1) Any component of the remote operations system fails and prevents the remote operator from being able to visually identify vessels, communicate with vessels, detect vessels immediately underneath the bridge or visually identify trains approaching the bridge;

- (2) CSX fails to meet Federal Railway Administration (FRA) or any other government agency safety requirements;
- (3) Anytime at the direction of the District Commander.

Dated: June 28, 2022

R.V. Timme,
Rear Admiral, U.S. Coast Guard,
Commander, Eighth Coast Guard District.

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